



Senator Feinstein Seeks to Prevent Ninth Circuit Split on Budget Reconciliation Bill

November 2, 2005

Washington, DC – U.S. Senator Dianne Feinstein (D-Calif.) today asked a key Republican Congressman for help in keeping a proposed split of the Ninth Circuit Court of Appeals out of the budget reconciliation legislation which is being considered by the House and the Senate over the next few weeks.

Senator Feinstein said she intended to raise a point of order on the floor of the Senate if the Ninth Circuit split language is included in the final Budget Reconciliation conference report. Under the so-called “Byrd Rule,” the inclusion of matters in reconciliation measures not connected to its central, budgetary purpose is generally prohibited and subject to a 60-vote point of order. So supporters of the split would need 60 votes to waive the point of order and keep the measure in the bill.

In a letter to Chairman of the House Rules Committee, David Dreier (R-Calif.), Senator Feinstein wrote: **“I understand that the House is considering an effort to break up the Ninth Circuit Court of Appeals by attaching legislation to the Budget Reconciliation Bill. I would strongly urge you to use your good offices to prevent the legislation to split the Ninth Circuit from becoming a part of the House Budget Reconciliation Bill.”**

The proposal that is believed to be under consideration (and that was approved as a stand-alone bill by the House Judiciary Committee last week), would split the Ninth Circuit in two and create:

- A new Ninth Circuit, consisting of California, Hawaii, Guam, and the North Marianas Islands; and
- A new Twelfth Circuit, consisting of Arizona, Nevada, Idaho, Montana, Oregon, Washington, and Alaska.

The split would dramatically increase the caseload for the new Ninth Circuit. A new Ninth Circuit of California and Hawaii would keep 72% of the caseload of the current Ninth Circuit, but only 60% of the judges. As a result, the caseload a new Ninth Circuit would have 536 cases per judge, while the proposed Twelfth Circuit would have only 317 cases per judge.

It has been estimated by the Administrative Office of the courts that such a split could cost as much as \$96 million in start up costs for the Twelfth circuit and \$16 million in annual operating expenses.

Only 3 of the 24 active judges on the Ninth Circuit favor splitting the Circuit. Additionally, the state bar associations that have weighed in on the split -- Arizona, Washington, Montana, and Hawaii -- all oppose breaking up the Ninth Circuit.

A copy of Senator Feinstein's letter to Chairman Dreier follows:

November 1, 2005

The Honorable David Dreier
233 Cannon House Office Building
Washington, DC 20515

Dear Congressman Dreier:

I understand that the House is considering an effort to break up the Ninth Circuit Court of Appeals by attaching legislation to the Budget Reconciliation Bill. I would strongly urge you to use your good offices to prevent the legislation to split the Ninth Circuit from becoming a part of the House Budget Reconciliation Bill.

The Senate Judiciary Committee is in the process of holding hearings on proposals to split the Ninth Circuit. Many significant questions have been raised, some have been answered and some have not.

A "new" Ninth Circuit of California, Hawaii, Guam, and the North Marianas Islands would keep 72% of the caseload of the current Ninth Circuit, but only 60% of the judges. As a result, Ninth Circuit judges in California would have 536 cases per judge, while judges in the proposed Twelfth Circuit would have only 317 cases per judge. This proposal would be simply unfair.

It is my understanding that inclusion of this provision splitting the Ninth Circuit would be a violation of the so-called "Byrd Rule." It will be my intention to raise this point of order, should the Ninth Circuit split language be included in the Budget Reconciliation Bill.

I hope you will ensure that this version is not included. I would be happy to discuss this with you further. Please feel free to call me.

Sincerely yours,

Dianne Feinstein